



Report to the Auburn City Council

Action Item
Agenda Item No. **9**

[Signature]
City Manager's Approval

To: Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Michael R. Cobden, Assistant City Attorney
Date: January 4, 2012
Subject: Procedures for Appointments of Councilmembers to Compensated Positions on Boards and Commissions

The Issue

A recent Fair Political Practices Commission (FPPC) opinion concludes that a member of the City Council cannot participate in discussion or vote on his or her own appointment to a position on a board or commission for which more than \$250 per year in compensation is paid. At the City Manager's request, we write to suggest procedures for making these appointments which will allow you to comply with the FPPC's view of the law.

Recommendation

We recommend that the Council follow the procedures outlined in this report to ensure compliance with the FPPC opinion.

Fiscal Implications

The resources to prepare this staff report are budgeted. Adopting the recommended procedures will not result in increased costs for the City.

Alternatives

The options available to the City Council are:

1. Continue to nominate and approve appointments without change, risking legal and political controversy and inviting enforcement by the FPPC.
2. Implement the procedures outlined in this report.
3. Direct the City Attorney to develop alternative procedures.

Discussion

The Political Reform Act generally prohibits any public official, including City Councilmembers, from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. The purpose of the rule is to avoid conflicts of interest, and there are a variety of methods for determining whether a conflict exists due to the financial interests of a public official. The Act exempts from the definition of "income" which can generate a conflict of interest compensation for governmental service, including payments received for service on a commission, board, or other appointed governmental body. However, the Fair Political Practices Commission has adopted a regulation finding an impermissible impact on an elected official's personal finances if he or she participates in a decision to appoint him- or her-self to another board or commission for which compensation of \$250 per year is paid. This regulation and the FPPC staff opinions regarding it are controversial and may be revisited. In the meantime, however, we recommend you comply with them.

The City Council currently appoints one or more of its own members to a variety of organizations, commissions, and agency boards. Most of these appointments are entirely volunteer commitments, but a few pay \$250 or more per year, including:

Placer County Air Pollution Control District Board
Placer County Flood Control District Board
Placer County Local Agency Formation Commission
Placer County Transportation Planning Agency
Placer Mosquito & Vector Control District
Sacramento Area Council of Governments

Under the FPPC's rules, when the Council appoints one of its own members to these commissions, committees, or boards (as is commonly required), a nominee may not participate in the discussion, or vote on the appointment. The rule does not apply to appointments to any other commissions, committees, or boards for which compensation of less than \$250 per year is paid. Therefore, we recommend that the Council use the following procedure as to the appointments for which \$250 or more in compensation is paid:

1. Before the Council discusses and appoints councilmembers to compensated board or committee positions, councilmembers should inform the Mayor of their interest in nomination. If the Mayor would like to be nominated for such a position, he or she should inform the Mayor Pro Tem.
2. If the Council wishes all such appointments can be placed on the consent calendar for approval as long as the minutes reflect that the interested members abstain from voting on their own appointment(s). The FPPC's rules do not require a Councilmember to leave the room when abstaining from a consent-calendar item.

3. If any nomination or appointment requires discussion, the nominated Councilmember must leave the dais prior to discussion. If one councilmember has an interest in more than one appointment which bears discussion, it will be efficient to take those as a group so that he or she need leave the dais only once.

Conclusion

We recommend that the Council follow these procedures for all appointments for which compensation of more than \$250 per year is paid. Michael Colantuono will be present at your January 9th Council meeting to provide additional assistance on this subject. If we can provide further advice or information in the meantime, please let us know.

c: Bob Richardson, City Manager

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